

October 2, 2015

Mr. James Caruso, Project Manager  
San Luis Obispo County Department of Planning and Building  
County Government Center  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408

RE: County File Number DRC 2014-00140  
Request by Foster-Gill, Inc. for a Minor Use Permit, located at  
268 Front Street, Avila Beach

Dear Mr. Caruso,

My brother, Matthew Ferrini and I would like to request a hearing on the above referenced matter.

Our families own the residence located at 44 San Luis Street, A.P. # 076-222-019, located adjacent to Ocean Grill restaurant.

We have serious objections and concerns regarding the operational changes requested by the applicant. Moreover, we think it is important to emphasize that the current operating practices of the Ocean Grill are not consistent with the approved conditions allowed in **Minor Use Permit # D030068P**.

We wish to address the following concerns:

1. Hours of Operation:

While Forster-Gill, Inc. is requesting to change the closing time from 10:30 p.m. to 11:00 p.m., their current hours of operation as dictated by the **Minor Use Permit Conditions of Approval Exhibit B #15 Hours of Operation** (See Attachment 1) require a 9:30 p.m. closure of patio service May 1 through Oct. 30 and an 8:30 p.m. closure of the patio service from Nov. 1 through April 30.

Furthermore, we think it is important to point out that according to the terms of the **Department of Alcoholic Beverage Control** File 41-532771 conditional license issued to Ocean Grill, Inc. provision #2: (See Attachment 2) "Sales, service and consumption of alcoholic beverages shall be permitted *in the patio area only until 9:30 PM* each day of the week." We think it is reasonable that the operation hours remain as currently mandated.

Similarly, Forster-Gill, Inc. is requesting to extend post closure clean-up by 90 minutes until 12:30 a.m. Because of the noise associated with clean-up at this late hour, we request the clean-up stop at the currently allowed time of 11p.m. as dictated in the **Minor Use Permit Conditions of Approval Exhibit B #16**.  
(See Attachment 1)

2. Forster-Gill, Inc. is requesting an allowance for outdoor amplified music.

This is contrary to *both* the **Minor Use Permit Conditions of Approval Exhibit B #20** (Attachment 1) which states, "No amplified outdoor music is allowed at any time." and to **Alcoholic Beverage Control** File # 41-532771 Conditional License provision #5 (See Attachment 2) "The use of any amplifying system or device is prohibited on PATIO, and the use of any such system or device inside the premises shall not be audible outside the premises."

Most importantly, provision #4 (See Attachment 2) of the **Alcoholic Beverage Control** File # 41-532771 states, "Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as defined on the ABC-257 dated 5-1-13."

We believe the above standards were imposed to ensure that disruptions to nearby residences would be kept to a minimum and therefore, we ask that the existing standards be maintained.

3. Forster-Gill, Inc is proposing to construct a garden area and temporary rain covers.

According to the **Declaration of Covenants, Conditions and Restrictions** recorded October 23, 1998 (See Attachment 3) :

"No building, tree, hedge, shrub, antenna or other vertical projection of any kind shall be erected on or permitted to remain on said Parcel 1 which will obstruct views from said Parcel 2. More specifically, no vertical projection on Parcel 1 shall extend higher than twelve (12) feet above the grade measured at the top of curb of San Luis Street adjacent to the northwest corner of said Parcel 1."

Also, with regard to construction of a garden area, **Minor Use Permit Conditions of Approval Exhibit B #19** (See Attachment 1) requires, "All lighting shall consist of "down-lights" that minimize spill over onto adjacent properties."

Therefore, we wish to see the existing 12 foot height limit strictly enforced on all aspects of the patio expansion. This is of great concern to us because the applicant has already stockpiled dirt to a level within 4 1/2 feet of the allowed 12 foot height limitation without a grading permit. We also wish to see the floor elevation of the patio clearly defined and that all patio construction be properly inspected so as to maintain the integrity of our adjacent property.

We also wish to share our concerns and complaints regarding the applicant's current operational practices that are not consistent with the terms of the **Minor Use Permit**. On July 24, 2013, attorney Charles Kirschner wrote to Ms. Ryan Hostetter regarding both the Setback and Emissions issues on behalf of our family. (See Attachment 4) Mr. Kirschner raised many of the same issues we are reiterating today. It is most unfortunate that since that time the situation has deteriorated rather than improved.



1. Forster-Gill, Inc continues to operate in violation of the **Minor Use Permit** under the heading **Avila Beach Specific Plan Standards** regarding Rear Setbacks and Allowable Uses (See Attachment 1) which states, "A minimum 10 Foot setback from property line is required in the rear of the building." The only uses allowed in the setback are *parking, service access and landscaping*. This photo demonstrates total disregard of the above condition. (See photo #1)

2. Forster-Gill, Inc also operates in violation of **Minor Use Permit Conditions of Approval Exhibit B Emissions #18** (See Attachment 1) "The applicant agrees to install the most technologically advanced and effective filters and carbon absorbing systems to minimize odors on the property and adjacent sites. Exterior vents shall be placed and designed so as to minimize the effect of emissions and noise on adjacent residential properties." Mr. Gill has built a pizza oven, the emissions of which are so offensive that we are forced to keep all our exterior windows closed when it is in operation and which has deposited a layer of black soot on the west side of our home. We would like to see the applicant discontinue the use of the pizza oven or be required to filter its smoke emissions pursuant to the terms of the **Minor Use Permit** . (See photo #2)

We acknowledge that the applicant constructed a sound barrier roof over the 10 foot setback area in July of 2014, in an attempt to mitigate the extremely loud noise from the exhaust fan and its emissions. This was minimally effective, but the point remains that this should not have happened.

Our father, Felton Ferrini, devoted countless hours meeting with County Planning officials and the applicant, Mr. Rob Rossi, to develop the Good Neighbor Standards in 2003 upon which the **Minor Use Permit** was based. Mr. Gill purchased 268 Front Street subject to the restrictions set out both in the Minor Use Permit and the recorded declaration of Covenants, Conditions and Restrictions. The applicant's track record of blatant disregard of the Good Neighbor Standards should not be allowed to continue.

Respectfully submitted,

Matthew Ferrini

Beth (Ferrini) Katsaris

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Respectfully submitted,



Matthew Ferrini



Beth (Ferrini) Katsaris





"Making a Difference"

COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING AND BUILDING  
STAFF REPORT

Tentative Notice of Action

MEETING DATE <b>January 16, 2004</b> LOCAL EFFECTIVE DATE <b>January 30, 2004</b> APPROX FINAL EFFECTIVE DATE <b>February 23, 2004</b>	CONTACT/PHONE <b>James Caruso, Senior Planner</b> <b>(805) 781-5702</b> <b>jcaruso@co.slo.ca.us</b>	APPLICANT <b>Jim Vitullo and Rob Rossi</b>	FILE NO. <b>D030068P</b>
SUBJECT Request by Rob Rossi and Jim Vitullo to operate a 740 sq ft restaurant in an existing building with a 600 sq ft addition and outdoor seating. The project is located on the north side of Front St, at the intersection of Front and San Luis Streets (268 Front Street) in the community of Avila Beach in the San Luis Bay (Coastal) planning area.			
RECOMMENDED ACTION Approve Minor Use Permit D030068P based on the findings listed in Exhibit A and the conditions listed in Exhibit B			
ENVIRONMENTAL DETERMINATION The proposed project was found to be consistent with the Avila Beach Specific Plan EIR.			
LAND USE CATEGORY Commercial Retail	COMBINING DESIGNATION Local Coastal Program	ASSESSOR PARCEL NUMBER 076-222-018	SUPERVISOR DISTRICT(S) ②
PLANNING AREA STANDARDS:  <i>Does the project meet applicable Planning Area Standards: <b>Yes - see discussion</b></i>			
LAND USE ORDINANCE STANDARDS:  <i>Does the project conform to the Land Use Ordinance Standards: <b>Yes - see discussion</b></i>			
FINAL ACTION This tentative decision will become the final action on the project, unless the tentative decision is changed as a result of information obtained at the administrative hearing or is appealed to the County Board of Supervisors pursuant Section 23.01.042 of the Coastal Zone Land Use Ordinance; effective on the 10th working day after the receipt of the final action by the California Coastal Commission. The tentative decision will be transferred to the Coastal Commission following the required 14 calendar day local appeal period after the administrative hearing.  The applicant is encouraged to call the Central Coast District Office of the Coastal Commission in Santa Cruz at (831) 427-4863 to verify the date of final action. The County will not issue any construction permits prior to the end of the Coastal Commission process.			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

Attachment 1



EXISTING USES: Vacant one story office building	
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Commercial retail/SFD <i>East:</i> Commercial Retail/Vacant/Motel <i>South:</i> Recreation/Pacific Ocean <i>West:</i> Commercial Retail/retail (Under construction)	
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Avila Valley Community Advisory Group, Public Works, CDF, Avila Beach Community Services District, California Coastal Commission	
TOPOGRAPHY: Flat	VEGETATION: Barren
PROPOSED SERVICES: Water supply: Avila Beach CSD Sewage Disposal: Avila Beach CSD Fire Protection: CDF/County Fire Dept	ACCEPTANCE DATE: November 19, 2003

## DISCUSSION

### Project Description

The existing building is an approximately 740 sq ft one story wood frame building that once served as a field office for Unocal prior to the clean up. The building is setback from each of its street frontages by about 20 feet. The one story is approximately 15 feet high with a very low sloping comp shingle roof. A 600 sq ft addition will be constructed on the rear of the building to enclose service activities. A majority of the seating will be on the outside patio along Front Street with views to the ocean. The facility will seat a maximum of 100 people (60 outside seats).

### PLANNING AREA STANDARDS:

**Water Authorization.** Submittal of a "will-serve" letter from the Avila Water District is required prior to issuance of any building permits for construction proposed to have water service. *Will serve letter will be a condition of approval of the permit.*

**Priority and Protection of Visitor-Serving Uses.** Priority shall be given to visitor-serving uses throughout the Front Street Commercial District and the Commercial retail area. Low cost visitor serving facilities shall be protected, encouraged and where feasible, provided. *The proposed project is a visitor serving facility and reuses an existing small structure that was a non visitor serving uses prior to this proposal.*

### Avila Beach Specific Plan Standards

The Avila Beach Specific Plan has been adopted by the Board of Supervisors and by the California Coastal Commission. The proposed project is located on Front Street in the area known as Front Street Commercial District. The Specific Plan contains development standards for uses in this area that extends along the north side of Front Street from San Juan to San Antonia Streets.



**Front Street Setbacks:** The Specific Plan allows for variable front setbacks in this area with the exception of corner lots. Corner lots have a zero setback from Front Street "in order to define the corners of the block and to create a framework in which the variable setbacks will have an impact on the streetscape." *The proposed project is a new use in an existing building that is 20 feet off the front property line. the applicant purposes the addition of a low wall in order to define the corner of the block.*

**Side Setbacks:** Side setbacks shall be zero feet from the property line at the street frontage. *The proposed project has a 20 foot setback on both street sides of the structure. As this is not new development, the existing setback may be maintained.*

**Rear Setbacks and Allowable Uses:** A minimum 10 foot setback from property line is required in the rear of the building. The only uses allowed in the setback are parking, service access and landscaping. *The proposed project has a 10 foot setback from the rear property line with parking, service access and landscaping the only uses in this area of the parcel.*

**Allowable Building Heights:** All buildings may be 15 feet tall above the "main street frontage" defined as frontage on Front Street. A building may be up to 25 feet tall if at least one of several criteria are met. *The proposed building is 15 feet high as measured from the Front Street elevation and is consistent with this section as the height.*

**Building Articulation:** All facades shall emphasize three dimensional detailing such as cornices, window moldings and reveals. Architectural elements used to provide relief can include awnings and projections, trellises, detailed parapets and arcades. *The proposed structure utilizes many of these details such as awnings and decorative wood trim.*

**Building Materials:** Buildings materials shall emphasize stucco, painted wood, lap-siding and tile. *The proposed structure includes painted wood siding and stucco. No prohibited materials such as metal siding are proposed.*

**Roof Types/Detailing/Materials:** Buildings shall have articulated parapet walls at roof lines; roofs shall be non-reflective. *The proposed plans show the existing slightly sloped roof with a long overhanging eave. Roof material is composition asphalt shingle.*

**Overhangs:** Overhangs and awnings are encouraged on each building to provide shade and a sense of enclosure. *The proposed plans show canvas awnings on the Front St elevation.*

**Building Scale:** New development should give the appearance of being separate buildings on 25' or 50' wide lots. *The proposed project will not significantly alter the outside of the building. The patio along Front Street behind a low 4' high wall will be the primary element on the frontage.*

**Signage:** Several standards address signage for Front Street businesses (B.10 - B.10h). The basic requirements for signage encourage artistic expression, use of icons, and hand painted wood. Signs shall not be constructed of prefabricated letters or plastic. *The signs for the proposed building will be reviewed and approved prior to issuance of a building permit.*

**Parking Requirements:** Uses other than residences or lodging are not required to provide on-site parking, but must pay in-lieu parking fees for any unbuilt required parking. *The proposed project does not need to provide any on site parking. In lieu fee will be assessed.*

The proposed plans are consistent with the Avila Beach Specific Plan.

**LAND USE ORDINANCE STANDARDS:**

Parking: Parking on site is not required in the Front St Commercial District pursuant to the Specific Plan. An in-lieu fee will be collected.

**COASTAL PLAN POLICIES:**

Shoreline Access: ☒ N/A  
Recreation and Visitor Serving: ☒ N/A Policy No(s):  
Energy and Industrial Development: ☒ N/A  
Commercial Fishing, Recreational Boating and Port Facilities: ☒ N/A  
Environmentally Sensitive Habitats: ☒ N/A  
Agriculture: ☒ N/A  
Public Works: ☒ N/A  
Coastal Watersheds: ☒ N/A  
Visual and Scenic Resources: ☒ N/A  
Hazards: ☒ N/A  
Archeology: ☒ N/A  
Air Quality: ☒ N/A

***Does the project meet applicable Coastal Plan Policies:*** Yes, as conditioned

**COMMUNITY ADVISORY GROUP COMMENTS:** The Avila Valley Advisory Committee and their Avila Beach sub committee recommend approval of the project with several operational conditions that have been included in the proposed conditions.

**AGENCY REVIEW:**

Public Works- in file  
CDF - in file  
Avila Beach Community Services District - attached  
California Coastal Commission - no comments received.

Staff report prepared by James Caruso



**EXHIBIT A - FINDINGS**  
**Rossi/Vitullo D030068P**

**CEQA**

- A. Pursuant to Section 15183 of the CEQA Guidelines, the proposed project has been found to be consistent with the development density adopted in the Avila Beach Specific Plan for which a Final EIR was certified by the Board of Supervisors on April 11, 2000. There are no project-specific significant effects which are peculiar to the project or its site. Furthermore, the mitigation measures identified in the certified Final EIR prepared for the Specific Plan shall be implemented for this project as applicable.

**Minor Use Permit**

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the proposed restaurant does not generate activity that presents a potential threat to the surrounding property and buildings. This project is subject to Ordinance and Building Code requirements designed to address health, safety and welfare concerns.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the proposed restaurant is similar to, and will not conflict with, the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project is located on Front St, a collector road constructed to a level able to handle any additional traffic associated with the project

**Coastal Access**

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act, because the project is not adjacent to the coast and the project will not inhibit access to the coastal waters and recreation areas.

**EXHIBIT B - CONDITIONS OF APPROVAL**  
**Rossi/Vitullo D030068P**

**Approved Development**

1. This Conditional Use Permit authorizes:
  - a. Construction of a 600 sq. ft addition to the existing structure.
  - b. Use of the structure as a restaurant with indoor and outdoor seating for approximately 100 persons.
2. This approval authorizes development in compliance with the Avila Beach Specific Plan.

**Site Development**

3. Site development shall be consistent with the approved site plan, floor plans and elevations. Colors and materials shall be substantially similar to the colors and materials identified by the applicant and on file with the Dept. of Planning and Building. Sidewalk, curb and gutters may be required to be installed on both property frontages.

**Building Height**

4. Building height shall not exceed the height shown on the approved plans or 15 feet above the main street frontage, whichever is less.

**Avila Beach Specific Plan**

5. The final design of the structure shall be consistent with the Avila Beach Specific Plan.

**Fire Safety Plan**

6. **Prior to issuance of a construction permit**, the applicant shall provide proof of compliance with an approved safety plan from the County Fire Dept. including installation of a quick response residential fire sprinkler system as required by CDF.

**Water and Sewer Service**

7. **Prior to the issuance of a construction permit**, the applicant shall submit a will-serve letter from the Avila Beach CSD for water and sewer service.

**Undergrounding of Utilities**

8. All utilities shall be located underground

**Drainage**

9. **Prior to issuance of a construction permit**, the applicant shall submit a drainage plan to the County Engineer for review and approval. The plan shall incorporate Best Management Practices to handle the runoff from the site in compliance with the San Luis Bay (Coastal) Planning Area requirements.

**Architecture**



10. **At the time of application for construction permits**, the applicant shall submit architectural elevations of all proposed structures to the Department of Planning and Building for review and approval. The elevations shall show exterior finish materials, colors, and height above the existing natural ground surface and shall be consistent with the requirements of the Specific Plan and this approval.

#### Landscaping

11. **At the time of application for construction permits**, the applicant shall submit landscape, irrigation, landscape maintenance plans and specifications to the Department of Planning and Building for review and approval. The landscape plan shall be prepared as provided in Section 23.04.186 of the San Luis Obispo County Coastal Zone Land Use Ordinance.

#### Miscellaneous

12. **Prior to issuance of a construction permit**, the applicant shall pay all applicable school and public facilities fees.
- ✓ 13. **Prior to occupancy of any structure associated with this approval**, the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.
14. This permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050.

#### Hours of Operations

15. The business may operate on the following schedule:
- a. November 1- April 30 - Inside - 7 a.m. to 10:00 p.m.  
Patio - 7 a.m. to 8:30 p.m.
- b. May 1 - October 30 - Inside - 7 a.m. to 10:30 p.m.  
Patio - 7 a.m. to 9:30 p.m.

ABC  
conditions

16. All clean up and maintenance activities must be completed within 30 minutes of closing with kitchen operations commencing no earlier than 6:30 a.m. daily. Outside setup may be started no earlier than 6:45 a.m. All noise associated with the interior kitchen activities shall be confined to the structure. Doors and windows shall be kept closed during prep times.

#### Alcohol

17. The applicant agrees to have only beer and wine for sale with no harder liquor available.

#### Emissions

18. The applicant agrees to install the most technologically advanced and effective filters and carbon absorbing systems to minimize odors on the property and adjacent sites. Exterior vents shall be placed and designed so as to minimize the effect of emissions

and noise on adjacent residential properties.

19. All lighting shall consist of "down-lights" that minimize spill over onto adjacent properties.
20. No amplified outdoor music is allowed at any time.



**BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA**

IN THE MATTER OF THE APPLICATION OF

OCEAN GRILL, INC.  
OCEAN GRILL  
262-268 FRONT ST  
AVILA BEACH, CA 93424

} FILE 41-532771

} REG.

**PETITION FOR CONDITIONAL  
LICENSE**

For Issuance of an On-Sale Beer And Wine - Eating Place -  
License

Under the Alcoholic Beverage Control Act

WHEREAS, petitioner(s) has/have filed an application for the issuance of the above-referred-to license(s) for the above-mentioned premises; and,

WHEREAS, the proposed premises and/or parking lot, operated in conjunction therewith, are located within 100 feet of residences(s); and,

WHEREAS, issuance of the applied-for license without the below-described conditions would interfere with the quiet enjoyment of the property by nearby residents and constitute grounds for the denial of the application under the provisions of Rule 61.4, of Chapter 1, Title 4, of the California Code of Regulations; and,

WHEREAS, pursuant to Section 23958 of the Business and Professions Code, the Department may deny an application for a license where issuance would result in or add to an undue concentration of licenses; and,

WHEREAS, the proposed premises are located in Census Tract 0116.00 where there presently exists an undue concentration of licenses as defined by Section 23958.4 of the Business and Professions Code; and,

WHEREAS, the petitioner(s) stipulate(s) that by reason of the aforementioned over-concentration of licenses, grounds exist for denial of the applied-for license(s); and,

WHEREAS, the San Luis Obispo County Department of Planning and Building, on February 23, 2004, approved a Minor Use Permit, limiting the petitioner(s) licensed operation; and,

WHEREAS, the issuance of an unrestricted license would be contrary to public welfare and morals;

  
Initials

Attachment 2

NOW, THEREFORE, the undersigned petitioner(s) do/does hereby petition for a conditional license as follows, to-wit:

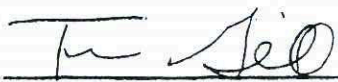
- 1 Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 7:00 AM and 10:30 PM each day of the week.
- 2 Sales, service and consumption of alcoholic beverages shall be permitted in the patio area only between the hours of 7:00 AM and 9:30 PM, each day of the week.
- 3 The quarterly gross sales of alcoholic beverages shall not exceed the quarterly gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
- 4 Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as defined on the ABC-257 dated 5-1-13.
- 5 The use of any amplifying system or device is prohibited on PATIO, and the use of any such system or device inside the premises shall not be audible outside the premises.


This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

Petitioner(s) agree(s) to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

The petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s).

DATED THIS 27<sup>th</sup> DAY OF June, 20 13.

  
Applicant/Petitioner

  
Applicant/Petitioner



## INFORMATION AND INSTRUCTIONS

Rule 61.4, Chapter 1, Title 4, California Code of Regulations states:

No original issuance of a retail license or premises-to-premises transfer of a retail license shall be approved for premises at which either of the following conditions exist:

- (a) The premises are located within 100 feet of a residence.
- (b) The parking lot or parking area which is maintained for the benefit of patrons of the premises, or operated in conjunction with the premises, is located within 100 feet of a residence. Where the parking lot is maintained for the benefit of patrons of multiple businesses in the vicinity of the premises, the parking area considered for the purpose of this rule shall be determined by the area necessary to comply with the off-street parking requirements as mandated by the local ordinance, or if there are no local requirements for off-street parking, then the area which would reasonably be necessary to accommodate the anticipated parking needs of the premises, taking into consideration the type business and operation contemplated.

Distances provided for in this rule shall be measured by airline from the closest edge of any residential structure to the closest edge of the premises or the closest edge of the parking lot or parking area, as defined herein above, whichever distance is shorter.

This rule does not apply where the premises have been licensed and operated with the same type license within 90 days of the application.

Notwithstanding the provisions of this rule, the department may issue an original retail license or transfer a retail license premises-to-premises where the applicant establishes the operation of the business would not interfere with the quiet enjoyment of the property by residents.

A residence is defined as a place where people actually live, such as a single family home, condo, residential hotel or motel, or mobile home.

A determination must be made as to whether or not your proposed premises is located in an area as described above. In order to make such determination, it will be necessary for you to complete the front of this form, to be submitted at the time you file a formal application.

If you can establish that your business will not disturb the residents, your license may be issued subject to appropriate conditions.



**Rhonda Whittington**

Licensing Representative

Department of Alcoholic Beverage Control

3220 South Higuera Street, Suite 233

San Luis Obispo, CA 93401

(805) 541-7144

(805) 543-3814 Fax

[rhonda.whittington@abc.ca.gov](mailto:rhonda.whittington@abc.ca.gov)





RECORDING REQUESTED BY  
CHICAGO TITLE CO  
AND WHEN RECORDED MAIL TO:  
CHICAGO TITLE CO.

Doc No: 1998-069738

Rpt No: 00087742

Official Records  
San Luis Obispo Co.  
Julie L. Rodewald  
Recorder  
Oct 23, 1998  
Time: 08:00

RF -1	13.00
[ 3 ]	
TOTAL	13.00

Assessor's Parcel No. 076, 222, 014

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

KNOWN ALL MEN BY THESE PRESENTS:

That UNION OIL COMPANY OF CALIFORNIA, a California corporation, owner of the real property located in the County of San Luis Obispo, State of California, described as Parcel 1 and Parcel 2 of Parcel Map COAL 97-0205 (collectively, the "Parcels") as recorded in Book 53 at Page 52 of Parcel Maps, records of said County, does certify and declare that it has established and does hereby establish a common plan designed to preserve that value and scenic views of the Parcels in perpetuity and does hereby establish the following provisions and restrictions upon such Parcels:

No building, tree, hedge, shrub, antenna or other vertical projection of any kind shall be erected on or permitted to remain on said Parcel 1 which will obstruct views from said Parcel 2. More specifically, no vertical projection on Parcel 1 shall extend higher than twelve (12) feet above the grade measured at the top of curb of San Luis Street adjacent to the northwest corner of said Parcel 1.

All of the restrictions, covenants, and limitations set forth in this Declaration (hereafter, "Covenants") will run with the land and will be binding on all parties and their successors having or acquiring any right, title or interest in such Parcels or any portion thereof, and will inure to the benefit of all of the Parcels and the future owners of either Parcel or any portion thereof.

Each grantee of a conveyance or purchaser under a contract or agreement of sale covering any right, title or interest in any part of either Parcel, by accepting a deed or a contract of sale or agreement of purchase, accepted such document or documents subject to, and agrees to be bound by, any and all of the Covenants set forth in this Declaration.

Enforcement of the Covenants set forth in the Declaration will be by proceedings at law or in equity against any person or persons violating or attempting to violate the same either to restrain violation or to recover damages. Provided that a breach of any of such Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust

Attachment 3

made in good faith and for value as to any Parcel, but such Covenants shall be binding and effective against any owner of a Parcel whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

It is agreed that in the event that any restriction herein contained is invalid or is held to be invalid or void by any court of competent jurisdiction, such invalidity shall in no way affect any other restriction herein contained.

The failure to enforce any covenant or restriction in this Declaration will not be deemed a waiver of the right to enforce it thereafter. In any proceeding brought to enforce or restrain a violation of any provision of the Declarations, the non-prevailing party shall pay the attorneys' fees and legal costs of the prevailing party as fixed by the court in the proceeding.

IN WITNESS WHEREOF, this declaration has been executed by the party above named this 22nd Day of September, 1998.

Declarant

Union Oil Company of California,  
a California Corporation

By [Signature] By [Signature]  
Its ASSISTANT SECRETARY Its ASSISTANT SECRETARY



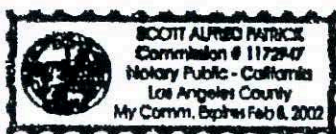
STATE OF CALIFORNIA )

COUNTY OF LOS ANGELES )

ss

On SEPTEMBER 22, 1998, before me, a Notary Public for the State of California, personally appeared DANIEL FACCHINI and PAUL R. MOORE, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Notary Public

END OF DOCUMENT

06-1-1778

5

FIRST STREET

FOUND AND ACCEPTED 3" BRASS CAP IN MONUMENT WELL STAMPED "LS 5138" PER (R2).

FOUND AND ACCEPTED 3" BRASS CAP IN MONUMENT WELL STAMPED "LS 5138" PER (R2).

**OWNER'S STATEMENT**  
WE, THE UNDERSIGNED, HEREBY STATE THAT WE ARE ALL THE OWNERS OF, AND ALL RECORD HOLDERS OF, SECURITY INTERESTS IN THE REAL PROPERTY SHOWN ON THIS MAP, AND THAT WE HEREBY CONSENT TO THE FILING AND RECORDATION OF THIS MAP.  
UNION OF CALIFORNIA, DBA UNICAL, A CALIFORNIA CORPORATION  
BY: *Daniel S. Hutchinson*

**NOTARY**

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
ON 09/21/98 BEFORE ME, Scott Alfred Patrick, a Notary Public, PERSONALLY APPEARED Daniel S. Hutchinson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in his capacity as owner, and that he executed the same for the purposes and consideration therein expressed. I, the Notary, being duly sworn, depose that the person whose name is subscribed to the foregoing instrument, and that he executed the same for the purposes and consideration therein expressed.  
WITNESS MY HAND AND SEAL  
SCOTT ALFRED PATRICK  
Notary Public - California  
My Comm. Expires 11/29/00  
COMMISSION NUMBER: 1072417

**SURVEYOR'S STATEMENT**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED ON THE FOLLOWING: 1. A RECONSTRUCTION OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF UNICAL, COMPANY OF CALIFORNIA, IN MAY, 1998. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY COMES IN ACCORDANCE WITH THE PROVISIONS OF THE SUBDIVISION MAP ACT AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.  
DATE: 9/29/98  
DANIEL S. HUTCHINSON, LS 5138  
(Expires 6-30-99)

**COUNTY SURVEYOR'S STATEMENT**

I HEREBY STATE THAT I HAVE EXAMINED THE ANNEXED MAP, THAT THE SUBDIVISION SHOWN THEREON IS SUBSTANTIALLY THE SAME AS IT APPEARS ON THE RECORDS OF THE COUNTY OF LOS ANGELES, AND THAT THE SAN LUIS OBISPO COUNTY CODE HAVE BEEN COMPLIED WITH AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.  
TIMOTHY F. BARNES, REC 23585  
EXPIRES 3/31/2000  
DATE: 6/03/98

**BOARD OF SUPERVISORS STATEMENT**

HEREBY STATE THAT THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, COUNTY OF CALIFORNIA, DID ON 09-22-98 APPROVE THIS MAP OF PARCEL MAP NO. COAL 97-0205 IN ACCORDANCE WITH THE PROVISIONS OF THE SUBDIVISION MAP ACT.  
Jillie L. Boudard  
CLERK OF THE BOARD OF SUPERVISORS OF SAN LUIS OBISPO COUNTY  
DATE: 10-22-98

**RECORDING STATEMENT**

FILED THIS 24 DAY OF OCTOBER, 1998, AT 8:00 A.M. IN THE OFFICE OF THE COUNTY CLERK, COUNTY OF LOS ANGELES, CALIFORNIA.  
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF OFFICE.  
FEE: \$8.00  
DOC. NO. 1908-069737  
BY: *Carolyn J. Proffitt*  
COUNTY CLERK

**PARCEL MAP COAL 97-0205**

A RECONSTRUCTION OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF UNICAL, COMPANY OF CALIFORNIA, IN MAY, 1998. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY COMES IN ACCORDANCE WITH THE PROVISIONS OF THE SUBDIVISION MAP ACT AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.  
DATE: 9/29/98  
DANIEL S. HUTCHINSON, LS 5138  
(Expires 6-30-99)



DANIEL G. SHANNON  
03133/08/97/6

**LEGEND**  
(R1) MAP OF THE TOWN OF ANILA AS FILED IN BOOK A PAGE 5  
(R2) RECORD OF SURVEY FILED IN BOOK 75 PAGE 56, OF LICENSED SURVEYORS  
(R3) RECORD OF SURVEY FILED IN BOOK 82 PAGE 19, OF LICENSED MEASURING DATA  
(C) CALCULATED FROM RECORD DATA  
(F) FOUND AND ACCEPTED 1" IRON PIPE WITH TAG STAMPED "LS 4819" PER (R2), UNLESS OTHERWISE NOTED.  
(A) FOUND AND ACCEPTED 3" BRASS CAP IN MONUMENT IN WELL PER (R2) SET AT/BEHIND WITH PLASTIC CAP STAMPED "LS 5138".  
(O) SEARCHED, NOTHING FOUND, NOTHING SET.

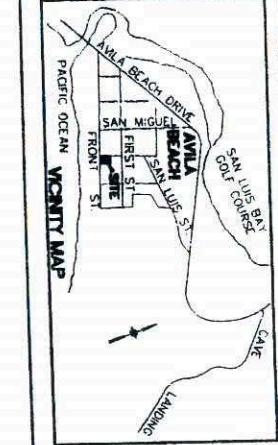
**BASES OF BEARINGS**

THE BASES OF BEARINGS FOR THIS SURVEY IS THE CONTINENT OF FIRST STREET ACCORDING TO THE RECORD OF SURVEY FILED IN BOOK 75 PAGE 56, OF LICENSED SURVEYORS IN THE OFFICE OF THE RECORDER FOR SAN LUIS OBISPO COUNTY SHOWING AS NORTH 70°24'20" WEST, ON SAID MAP.

**FRONT STREET**

**SAN ANTONIA STREET**

**SAN RAFAEL STREET**



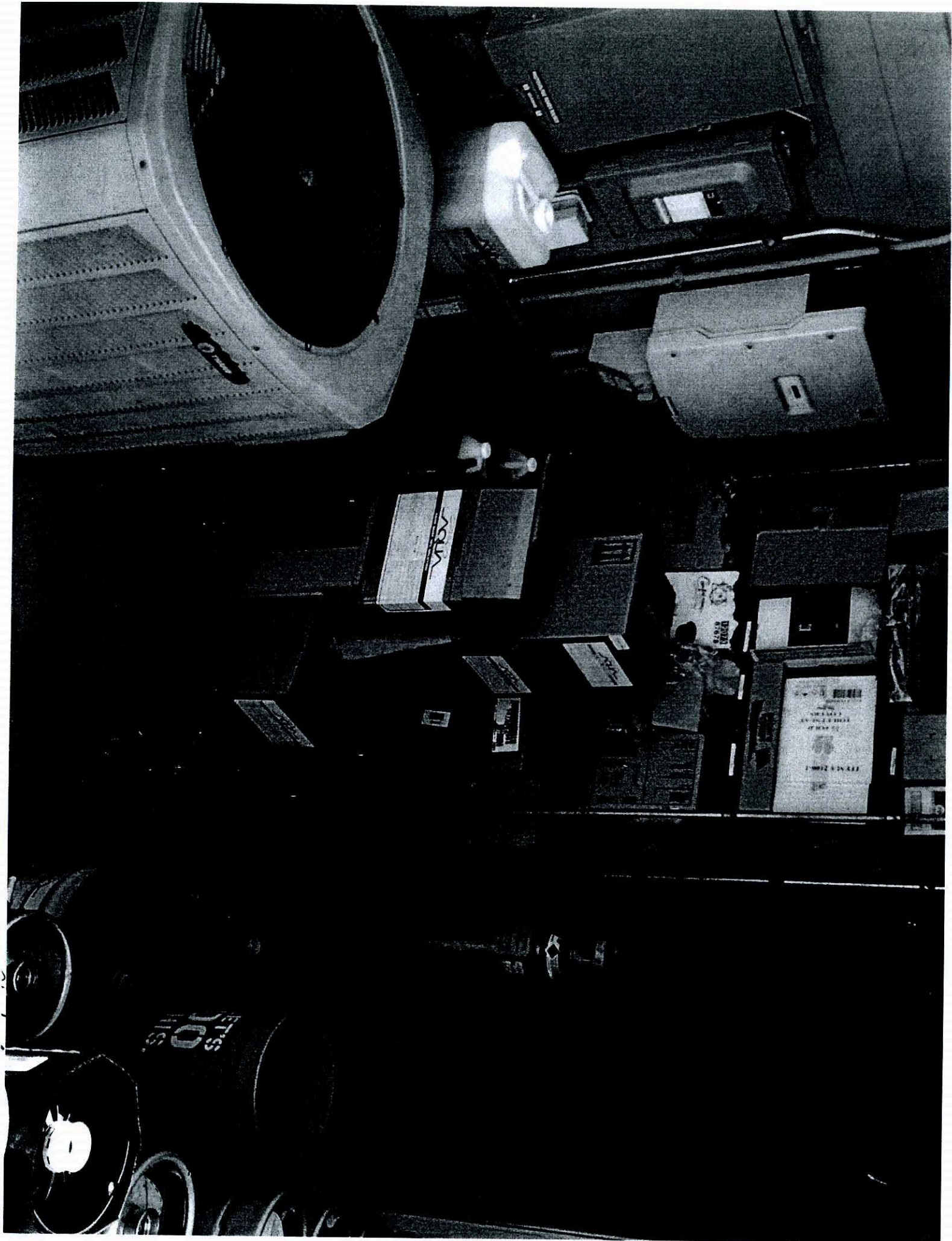
1 INCH = 30 FEET





Photo 2







JAMES B. MERZON  
CHARLES G. KIRSCHNER  
CHARLES P. OGLE

LAW OFFICES  
OGLE, MERZON & KIRSCHNER  
770 MORRO BAY BOULEVARD  
MORRO BAY, CALIFORNIA 93443-0720  
MAIL TO: POST OFFICE BOX 720

SLO COUNTY  
PLANNING/BUILDING  
DEPT  
2013 JUL 24 PM 1:29  
CHARLES E. OGLE, Retired  
(805) 772-7353  
FAX: (805) 772-7713

July 24, 2013

DELIVERED BY HAND

Ms. Ryan Hostetter  
Department of Planning  
County of Planning and Building  
County Government Center  
San Luis Obispo, CA 93408

Re: 268 Front Street, Avila Beach  
File #D030068P

Dear Ms. Hostetter:

This office represents Felton Ferrini, the owner of the residence located immediately behind the subject project. The purpose of this letter is to put your department on notice that my client regards some aspects of the construction now being done pursuant to the above-referenced minor use permit to be in violation of the conditions of that permit. Specifically, the 10 foot setback at the rear of the building is not being honored and the outdoor pizza oven, with its unfiltered chimney, clearly violates the emission restrictions called for in the permit. We ask that your department enforce the terms of the permit and thereby protect the nearby residents from the harmful consequences that the project threatens to cause.

Enclosed for your ready reference are the following documents:

1. 10/17/2003 Letter from Avila Beach Committee to SLO Co. Department of Planning & Building.
2. 268 Front Street Good Neighbor Standards Agreement between ROB Rossi and Felton Ferrini.
3. Dept. of Planning & Building Staff Report Notice of Tentative Action.

The first two documents are included for the purpose of providing historical context for the subject project. They demonstrate that my client and the prior owner of 268 Front Street (and original Applicant) foresaw the issues now before you and resolved them ten years ago.

Attachment 4

The third document is the operable instrument in this matter. The exhibit speaks for itself, of course, but I want to emphasize that Staff recommended approval of Minor Use Permit D030068P "based on the findings listed in Exhibit A and the conditions listed in Exhibit B".

### EMISSIONS

I draw your attention to Exhibit A-Findings, particularly to item "D" under "Minor Use Permit". It provides,

"The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use..."

In Exhibit B-Conditions of Approval, the section entitled Emissions provides:

The applicant agrees to install the most technologically advanced and effective filter and carbon absorbing systems to minimize odors on the property and adjacent sites. Exterior vents shall be placed and designed so as to minimize the effect of emission and noise on adjacent residential properties.

Mr. Ferrini's residence is located immediately behind the project. The owner and developer of the future restaurant has advised my client that he has spent some \$120,000 to purchase and install a high-tech carbon absorbing filtration system to capture the odors which would otherwise escape the restaurant's kitchen. Mr. Ferrini commends him for his diligence in this regard and appreciates the seriousness with which his neighbor has attempted to abide by the terms of the conditional use permit. However, notwithstanding the expense Mr. Gill has taken with the interior kitchen, he is now apparently in the process of constructing an outside pizza oven whose unfiltered chimney will spew smoke and fumes onto my client's home which is only about thirty feet distant.

We object in the strongest possible terms to this proposed use. We contend that the applicant cannot be permitted to install and operate an outdoor oven or barbeque unless the smoke from the unit is processed by the carbon absorbing filters already installed in the restaurant's kitchen. Discharging unfiltered smoke and fumes from an outside oven flies in the face of the permit's unambiguous and very specific requirement that the applicant shall install "the most technologically advanced and effective filters and carbon absorbing systems to minimize odors



on the property and adjacent sites".

### SETBACK

I draw your attention to the section entitled "Rear Setbacks and Allowable Uses" which provides:

A minimum 10 foot setback from property line is required in the rear of the building. The only uses allowed in the setback are parking, service access and landscaping. The proposed project has a 10 foot setback from the rear property line with parking, service access and landscaping the only uses in this area of the parcel.

As the project has developed, the setback restriction has been ignored in two respects: First, part of the rear wall of the building intrudes deeply into the setback area. Secondly, the applicant has installed two heating and ventilation units in the setback area. When activated, these units will surely generate noise and vibration. Like the emissions issue, the disregard of the setback requirement constitutes a clear violation of the terms of the permit.

Paragraph 13 of the section entitled, "Miscellaneous", provides: Prior to occupancy of any structure associated with this approval, the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.

I urge you to immediately visit the subject site. That inspection will demonstrate the existence of the violations addressed in this letter. I submit to you that unless and until they are corrected, the structure cannot be approved by your department. Those violations deeply concern my client because they are quality of life issues which he refuses to overlook. The Good Neighbor covenant negotiated by Mr. Ferrini and Mr. Rossi was designed specifically to mitigate the noise and odor problems associated with the operation of a restaurant immediately adjacent to a residence and the Applicant's disregard of these key provisions must not be allowed.

My client is very disappointed that the County has allowed the applicant to proceed with his project without adequately insuring that he abide by the terms of his permit. Unless those conditions of approval are enforced by your department, I foresee legal consequences for both the Applicant and the County.

Sincerely,

CHARLES G. KIRSCHNER  
cc: Felton Ferrini

SLO County Planning Department  
Attention: James Caruso  
APN: 076-222-018, File Number: DRC2014-00140

DEVELOPMENT  
PLANNING/BUILDING  
DEPT

Hand Delivered October 15, 2015

2015 OCT 15 AM 10:49

Honorable Planning Commission Members:

We regret that we cannot attend this meeting in person but are out of town attending a wedding.

We have owned our home in Avila at 233 First Street for nearly 15 years. Over that time we have seen Avila evolve from a residential community to a commercial centric community. The town consists of those who "make their living there but don't live there" and those who "live there." The incompatibility of those two groups has escalated exponentially over the last several years and has negatively impacted the livability for the residents.

We have many concerns with respect to the proposal by the Ocean Grill. These relate to their current operations, their non-compliance to the recorded conditions of approval from 2004, and the proposed project, which would violate the use of this property agreed to in 2004.

1. The original use of this property was intended to be a "beach café" where the noise would mirror that of the beach activity. Currently, this restaurant is bustling at night, with guests milling on the sidewalk and smokers blocking the sidewalk. The proposed project use goes well beyond the original intent, adding outside noise well past what is compatible with an adjacent residential neighborhood.
2. The proposed project violates the original hours of approved use. They should be allowed to operate only to 9:30 pm on the patio and should only have only 30 minutes for clean-up so that outside noise is completed by 10 pm to be compatible with adjacent residential neighborhood. Inside closing should not go past 10:30 in season since people are not quiet when returning to their cars parked on adjacent residential streets.
3. The conditions of approval 2004 designated that only wine and beer be served. In this new proposal, they should not be allowed any hard liquor.
4. The conditions of approval 2004 did not allow any amplified music. Amplified music is not compatible with the adjacent residential neighborhood and hotel.
5. The conditions of approval 2004 allowed a 600 square foot expansion. They are now asking for an additional 1800 square feet, three times the size of the previous expansion.
6. Currently while waiting for tables, patrons wait outside on the patio and may consume alcoholic beverages there. Enlarging the patio will actually mean a large increase in "bar" size for those waiting for tables or just coming by for a drink.
7. The conditions of approval 2004 state that they are not allowed to use the rear setback for anything other than parking, service access and landscaping. They have been using this area for storage, HVAC, and garbage and are currently violating this aspect of the conditions of approval.
8. Their original permit allowed for two outdoor "fire places." They circumvented the proper channels of approval for a "pizza oven" with a 15 plus foot tall chimney by seeking and gaining approval for this chimney under the pretense that it is a "substantial conformance" and does not require a MUP.
9. They are not allowed to operate or conduct business that will be "detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood". Their smoke producing pizza oven clearly does this as do the smokers standing outside the nearby residences.
10. When neighbors complained to the county about violations in July, 2013, nothing was corrected.

Besides the definable reasons why they should be denied approval for any of their requests, their violations highlighted in numbers 7, 8 and 9 demonstrate that they are untrustworthy and cannot be counted on to follow conditions of approval.

Respectfully yours,

*Fred & Anne Vernacchia*  
Fred and Anne Vernacchia

233 First Street  
Avila Beach